

State of New York  
Office of General Services  
Division of Real Estate Development

**THIS RENEWAL AGREEMENT MADE THIS 1<sup>ST</sup> OF MAY IN THE YEAR TWO THOUSAND AND ONE, BETWEEN THE PEOPLE OF THE STATE OF NEW YORK ACTING BY, EDMOND F. SCHORNO, THEIR FIRST DEPUTY COMMISSIONER OF GENERAL SERVICES IN THE EXECUTIVE DEPARTMENT HEREIN REFERRED TO AS THE “LESSOR” AND MARICULTURE TECHNOLOGIES, INC., A NEW YORK CORPORATION HAVING ITS PRINCIPAL OFFICE AND PLACE OF BUSINESS AT 4250 SUNRISE HIGHWAY #214, MASSAPEQUA, NEW YORK 11758, HEREINAFTER REFERRED TO AS THE “LESSEE”;**

WITNESSETH

WHEREAS, Article 6 of the Public Lands Law authorizes the Commissioner of General Services to issue leases for structures constructed on or above State-owned lands underwater and;

WHEREAS, the construction and placement of net pens on State-owned lands underwater for the cultivation of various types of aquaculture is a commercial structure requiring the issuance of a lease pursuant to the provisions of said Article 6.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I  
DEFINITIONS

1. “Aquaculture” means the culture, farming, cultivation and harvest of food fish, and other aquatic plants and animals.
2. “Structures and appurtenances” means net enclosed pens (net pens) which, when placed in the water, holds or confines the fishery or other aquatic plants and animals for the duration of growth until removed and marketed for sale or release.
3. “Fish Production” means fish sold in the round, filleted or blocked and other ancillary products.
4. “Urner Barry Seafood Price Index” means a bi-weekly trade index of market prices for fish and ancillary products.
5. “Delivered” means the amount in pounds or tonnage of fish removed from the net pens and shipped to the processing plant as reported to the United States Department of Agriculture on the Hazard Analysis and Critical Control Point (HACCP) form.

ARTICLE II  
DEMISED PREMISES

Lessor hereby demises and leases unto the Lessee, all that certain piece or Parcel of lands underwater, situate and lying in the Town of Southold, County of Suffolk and State of New York, and more particularly described on the maps in Appendix "B" attached hereto and made a part hereof.

### ARTICLE III USE

The premises may be used for aquaculture including the operation, construction and placement of structures and appurtenances, harvesting of the food fish, ancillary products and the use of the vessels to service the premises in accordance with applicable regulatory permits.

### ARTICLE IV TERM

The term of this Lease shall commence on the first above written date which shall be the start of the renewal lease year, and shall expire two Lease years thereafter, unless it shall be sooner terminated as hereinafter provided.

### ARTICLE V RENT

#### A. BASE RENTAL

Lessee shall pay the sum of One Thousand Dollars (\$1,000.00) on the effective date of this Lease. Annually thereafter on January 15th of each lease calendar year, Lessee shall pay to the Lessor in arrears the sum of \$5.00 per acre of underwater land permitted to be utilized by the U.S. Army Corps of Engineers and the New York State Department of Environmental Conservation which, as of May 1, 2001, amounts to 12.5 acres.

## B. PERCENTAGE RENTAL

In addition to the base rental, Lessee shall pay to the Lessor in arrears on or before January 15th of each lease year, a percentage rental based upon three percent (3%) of the annual gross revenue from fish production computed by using the Uner Barry Seafood Price Index averaged over a rental year for the actual tonnage delivered. It shall be the obligation of the Lessee to furnish information to the Lessor on or before December 15th of each lease year pertaining to the Delivered annual tonnage of Fish Production figures as submitted to the U.S. Department of Agriculture. The Lessee will provide the Lessor with USDA Hazard Analysis and Critical Control Point (HACCP) daily reports which shall record production figures and tonnage of fish produced.

The percentage rental or said gross revenue for a fractional part of the calendar year shall be computed on a pro-rata basis and any percentage rental as to such fractional part of a year shall be payable on or before January 15th following the end of such fractional period.

## ARTICLE VI RENEWAL/RENEGOTIATION

If the Lessee shall have kept, observed and performed each and all of its terms, covenants and conditions in this Lease, and shall be in full compliance with applicable state and federal environmental statutes and regulations, Lessee shall have the option to renew this Lease at the expiration of the term hereof, provided that at least three (3) months before such expiration, the Lessee notifies Lessor in writing of its intention to renew. Such renewal shall be for a term which is to be concurrent with then existing U.S. Army Corps of Engineers Permit period.

Each such renewed Lease shall have a renewal option, which shall not extend beyond the year 2037 and shall provide for rental in accordance with the following schedule:

- a) Base Rental: On January 15th of each option calendar year, Lessee shall pay to Lessor Five Dollars (\$5.00) per acre for each acre of underwater land being utilized at the time in accordance with permits obtained.
- b) Percentage Rental: In addition to Base Rental, Lessee shall pay to Lessor in arrears on or before January 15th of each lease year a percentage rental for option years one and two, 3% of the annual gross revenue from fish production computed by using the Uner Barry Seafood Price Index averaged over the rental year for the actual tonnage delivered.

The percentage rental shall be subject to increase in the option year and every fifth year thereafter. The every fifth year thereafter, will be escalated 1.5% for the next

five year period with the maximum being 10% of the annual gross revenue from fish production computed using the price set forth in the Urner Barry Seafood Price Index averaged over the rental year for the actual tonnage delivered in the prior lease year.

With the exception of the foregoing changes as to rental, all renewal leases shall have all the same terms and conditions as set forth herein.

#### ARTICLE VII DEFAULT

(a) In the event the Lessee shall default in the payment of any of the sums set forth in Article VI herein or in the performance and observance of any of the terms and conditions herein contained or if the proposed structures or appurtenances shall not have been maintained or used for a period of one (1) year as determined by inspection by the Lessor and such default or lack of user is not cured or time to cure extended by Lessor within sixty (60) days of receipt of a written notice of default and/or non-user from Lessor, then in such event, this Lease may be declared void at the option of the Lessor and the provisions for removal of said structures and appurtenances set forth in Article VIII shall apply in the same manner and with the same effect as so set forth. For the purposes of this Article, said period of one (1) year shall not begin until the placement of the first "net pen".

(b) In the event performance and observance of any of the terms and conditions under this Lease by Lessee is prevented, interrupted or delayed by causes beyond its control, including but not restricted to strike, riot, storm, flood, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, epidemics, quarantine restrictions, freight embargoes and unusually severe weather or delays of subcontractors due to such causes, and not caused by an act or failure to act by the party thereby delayed in such performance, the date or time or times for the performance of such term or condition by Lessee shall be extended for a period of time equal to the number of days the performance of such covenant, agreement or obligation by Lessor or Lessee is so prevented, interrupted or delayed.

#### ARTICLE VIII REMOVAL

At the termination of this Lease as heretofore provided or in the event this agreement is not renewed for an additional term, the Lessee agrees at its own expense and at no expense to the Lessor, to remove within ninety (90) days of a written notice of termination the structures and appurtenances placed upon the lands underwater of the Lessor and leave said land in as nearly the same condition as possible as it was prior to the construction and placement hereby authorized.

The Lessee shall provide a performance bond in the sum of Fifty Thousand Dollars (\$50,000.00) lawful money on the United States of America to guarantee proper removal of said structures and appurtenances. Said \$50,000.00 bond is based upon the acreage set forth in Article II and described in Appendix B, and said sum shall be increased at the request of the Lessor based upon the cost of removal of said structures and appurtenances. Such performance bond shall be in a form acceptable to the Lessor, and having as surety thereon such surety company or companies as are acceptable to the Lessor and which are authorized to do business in the State of New York.

#### ARTICLE IX INDEMNIFICATION

The Lessee assumes all risk in the operation, use alteration, repair, replacement, maintenance and removal of the structures and/or improvements and shall be solely responsible in damages for any and all accident and injuries to persons and property (including death) and hereby covenants and agrees to indemnify and hold harmless Lessor and its respective officers and agents from any and all claims, suits, actions, damages, costs of every nature and description arising out of or relating to the construction, reconstruction, inspection, operation, use, alteration, repair, replacement maintenance and removal of the structures and/or improvements or the violation by the said Lessee, its agents, employees or contractors of any law, code, order, ordinance, rule or regulation in connection therewith, unless caused by acts or omissions of Lessor, its agents, employees or contractors. Said Lessee agrees, upon being requested to do so, to assume the defense and to defend at its own cost and expense any action brought at any time against the People of the State of New York and/or its respective officers and agents in connection with the claims, suits and losses as aforesaid.

#### ARTICLE X INSURANCE

The Lessee shall carry liability insurance for personal injury and property damage, with an aggregate limit not less than \$1,000,000.00 to cover the liability assumed under the indemnity provisions of this Lease. All insurance required by this Lease shall be obtained at the sole cost and expense of the Lessee; shall be maintained with insurance carriers licensed to do business in New York State or as otherwise approved by Lessor; shall be primary and noncontributing to any insurance or self insurance maintained or approved by the Lessor; shall be endorsed to provide written notice be given to Lessor at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice evidenced by return receipt of United States Certified Mail; shall be sent to New York State Office of General Services, Division of Land Utilization, Corning Tower Building, 26th Floor, Empire State Plaza, Albany, New York 12242; such insurance shall be kept in force and effect during the

continuance of this Lease for the protection and indemnification of the State. The Lessee shall furnish to the State a certified copy of the policy or policies for the said insurance, together with an endorsement evidencing the fact that said policy or policies insure the liability assumed. Failure to obtain and maintain insurance coverage referred to hereunder shall not relieve Lessee of its obligation to protect and indemnify the Lessor as hereinabove provided. Lessor may review the liability insurance coverage annually for the purpose of assuring the adequacy of the protection and indemnification and may demand additional insurance coverage if reasonably necessary.

#### ARTICLE XI ASSESSMENTS; COMPLIANCE WITH LAW

(a) Lessee shall be responsible for and pay when due all federal, state, city, county, school taxes or other local taxes including all real property taxes, assessments, levies, fees, and other governmental charges whether general or special, ordinary or extraordinary, all sales and use taxes and all utility charges levied rendered or used about the Leased premises.

(b) Lessee shall promptly comply with every law, statute, rule, ordinance, regulation and notice of any municipal, county, state, federal or other authority having jurisdiction pertaining to or affecting the Leased Premises, including all local land use regulations.

(c) Lessee shall be required at all times during the term of this Agreement to be in compliance with Environmental Conservation Law Section 13-0316 and regulations, (Title 6 NYCRR Part 48). Specifically this Lease is subject to the terms and conditions of the Department of Environmental Conservation Permit No. 1-4738-01255\00001 and U.S. Army Corps of Engineers Permit No. 96-00600, and these permits are attached hereto as Appendix "C" and made a part hereof.

(d) That in the event Lessee shall be in default under this Article XI, and said default is not cured or time to cure extended within sixty (60) days of receipt of a written notice of default, then in such event, this Lease may be declared void at the option of Lessor and the provisions for removal of structures and appurtenances set forth in Article VIII shall apply in the same manner and with the same effect as so set forth.

#### ARTICLE XII ASSIGNMENT AND SUBLETTING

The Lessee may not assign or sublet any of its rights and interest under this Lease without the express written consent of the Lessor, which will not be unreasonably withheld.

In the event of any assignment of all of Lessee's rights and duties under this Lease after which assignment thereof, Lessee will cease to make any meaningful direct use of the premises, then the assignee shall assume all of the obligations of the Lease hereunder by assumption Agreement. Lessee agrees to submit a copy of such assumption, in form and terms reasonably acceptable to Lessor, at least (30) days prior to the execution thereof.

Notwithstanding such assignment or subletting or licensing during the term of this Lease, the Lessee shall remain liable to Lessor hereunder and shall guarantee the full and faithful execution of the compliance with all covenants, terms and conditions of this Lease herein contained. Further, the Lessor shall not be required to look to any assignee or subtenant or licensee of Lessee for the performance of any obligations of Lessee under this Lease, and Lessor shall not be deemed to have assumed any affirmative obligation with respect to any assignee, subtenant or licensee. This Lease and the term hereby demised may be mortgaged by the Lessee and the Lessee may mortgage or pledge its interest in and to any sublease, assignment or license of the leased premises or the rentals payable thereunder, provided such mortgage complied with provisions of this Lease.

#### ARTICLE XIII INSPECTION

The Lessee shall permit the Lessor or his delegated representative and the State Comptroller or his delegated representative to have full and free access to all vessels, yards, buildings, structures of every name, nature character and description used in connection with this Agreement and shall accord full and free inspection and examination of all records and books of account kept in connection with said operation, which records and books of account shall be available as required by Appendix A, Standard Contract Provisions, which is attached hereto and made a part hereof. Lessor shall use its best efforts not to interfere with Lessee's operation during said inspection and examination.

#### ARTICLE XIV BANKRUPTCY

Neither this Lease, nor any interest therein nor any estate thereby created shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law.

In the event the estate created hereby shall be taken in execution or by other process of law, or if Lessee shall be adjudicated insolvent or bankrupt pursuant to the provisions of any State or Federal insolvency or bankruptcy act, or if a receiver or trustee of the property of Lessee shall be appointed by reason of Lessee's insolvency or inability to pay its debts, or if any assignment shall be made of Lessee's property for the benefit of creditors, then and in any of such events, Lessor may at its option terminate this Lease and all rights of Lessee hereunder, by giving to Lessee notice in writing of the election of Lessor to so terminate.

#### ARTICLE XV NO WAIVER

No failure to exercise and no delay in exercising on the part of the Lessor or Lessee, any right, remedy, power or privilege under this Lease shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Lease Agreement

preclude any other or further exercise thereof. The rights, remedies, powers and privileges provided in this Lease are cumulative and not exclusive of those provided by law.

ARTICLE XVI  
LESSOR'S INTEREST

This Lease and its terms, covenants and conditions are intended to affect only the right, title and interest of the Lessor in the demised premises.

ARTICLE XVII  
NOTICE

Any notice by the Lessor to the Lessee shall be deemed to be duly given if mailed by certified mail, or nationally recognized overnight courier service, addressed to the Lessee at the address given above, and any notice by the Lessee to the Lessor shall be deemed to be duly given if mailed by certified mail addressed to the Office of General Services, Bureau of Land Management, Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower Building, 26<sup>th</sup> Floor, Albany, New York, 12242.

ARTICLE XVIII  
GOVERNING LAW

This agreement shall be governed and construed according to the laws of the State of New York, including but not limited to, the standard clauses for all New York State contracts, which are set forth in Appendix A attached hereto.

ARTICLE XIX  
QUIET ENJOYMENT

That upon Lessee paying the rentals and performing and observing all Lessee's other lease obligations, Lessee may peacefully and quietly have, hold, and enjoy the premises for the term hereof and any renewal periods.

IN WITNESS WHEREOF, the parties hereto have subscribed their names as of the date first above written.

The People of the State of New York

By \_\_\_\_\_  
Edmond F. Schorno  
First Deputy Commissioner  
of General Services

Mariculture Technologies, Inc.

By \_\_\_\_\_





STATE OF NEW YORK    }  
                                      :   SS.:  
COUNTY OF ALBANY    }

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2001, before me, the undersigned personally appeared Edmond F. Schorno, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public, State of New York  
Qualified in County of:  
My Commission Expires:

STATE OF                        }  
                                      :           SS.:  
COUNTY OF                    }

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2001, before me, the undersigned, a Notary \_\_\_\_\_ Public \_\_\_\_\_ in \_\_\_\_\_ and \_\_\_\_\_ for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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Notary Public, State of New York  
Qualified in County of:  
My Commission Expires:

Approved as to form this            day                                        Approved this            day  
of                                        , 2001                                        of                                        , 2001

ELIOT SPITZER  
Attorney General

By\_\_\_\_\_

H. CARL McCALL  
State Comptroller

By\_\_\_\_\_